IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

C.R No. 402 of 1999.

Judgement reserved on:

Date of decision : May 24, 2006.

Pritam Singh ……..Petitioner.

Versus

Surinder Pal & anr. ……. Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the petitioner: Mr. Sunil Awasthi, Advocate.

For the respondents: Pt. Om Parkash, Advocate, for Respondent No.1.

Surjit Singh J. (Oral).

Heard and gone through the record. The present revision petitioner and another person filed a suit, seeking issuance of permanent prohibitory injunction restraining the respondents-defendants from causing any interference in their possession over half share of the suit property claiming that that half share of property was possessed by them as tenants under the respondents-defendants. The respondents- defendants denied the revision petitioners' claim and pleaded that they and the revision petitioners were joint owners to the extent of half share each and that

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Whether reporters of local Papers may be allowed to see the judgment?

the revision petitioners were in possession of the land in the capacity of joint owners. They raised a number of preliminary objections, one of which pertained to the jurisdiction of the civil court. They alleged that the civil court did not have the jurisdiction to determine the question raised by the plaintiffs that they were tenants in respect of defendants' share and that such a question was required to be determined only by the Land Reforms Officer, under the provisions of H.P. Tenancy and Land Reforms Act and the Rules, framed thereunder. The trial court accepted the plea of the respondents-defendants that the civil court did not have the jurisdiction and ordered the return of the plaint. Appeal filed by the revision petitioners in the court of District Judge, stands dismissed and the finding and the order of the trial court have been affirmed.

Learned counsel for the revision petitioners has argued that the two courts have wrongly placed reliance upon the Full Bench judgement of this court rendered in the case of **Chuhniya Devi** vs. **Jindu Ram,** [1991(1) Sim. L.C.223]. He says that the ratio of the aforesaid judgement applies where the proceedings are taken out before the Land Reforms Officer, under the provisions of Section 104 of the H.P. Tenancy and Land Reforms Act, read with Chapter X of the H.P. Tenancy and Land Reforms Rules, and in the course of such proceedings, a question is raised whether a person cultivating the land is a tenant or not. The contention raised by the learned counsel is supported by a Division Bench judgement of this Court in **Shankar** vs. **Smt. Rukmani and others,** [2003 (1) Shim. L.C. 300]. The facts of that case were similar to the facts of the case in hand. It was held that the civil court had the jurisdiction to decide whether a

person in cultivating possession was a tenant or not and that the ratio of ***Chuhniya Devi's*** judgement, is attracted only where an order passed by the Land Reforms Officer, is challenged in the civil court.

Learned counsel representing respondent- defendant No.1, has pointed out that one of the respondents-defendants, namely Smt. Rattani Devi, died during the pendency of the revision petition in this court and her name was got deleted vide order dated 7.12.2000, without bringing on record her legal representatives. Apparently, one of the legal representatives of Smt.Rattani Devi, namely the other respondent herein, who is her son, is on record, and therefore, it cannot be said that Smt. Rattani's estate is totally unrepresented. The objection, therefore, is overruled.

As a result of the above discussion, the revision petition is allowed. The orders of the first appellate court and the trial court are set aside. The case is remanded to the trial court with a direction that the suit be tried and decided on merits, as per law.

The parties are directed to appear before the trial court on 28.6.2006.

May 24, 2006. **(Surjit Singh),**
(Hem) **Judge.**